

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Freddy Luis Castaneda-Farfan,

Petitioner,

v.

United States of America,

Respondent.

HONORABLE JOSEPH E. IRENAS

CIVIL ACTION NO. 09-4976 (JEI)

**ORDER GRANTING PETITIONER'S
PETITION TO VACATE, SET ASIDE,
OR CORRECT PETITIONER'S
SENTENCE**

(Dkt. No. 1.)

APPEARANCES:

Criminal - 08-257-JEI

Freddy Luis Castaneda-Farfan, *pro se*
FCI Manchester
Federal Correction Institution
P.O. Box 4000
Manchester, KY 40962
for Petitioner

Office of the US Attorney
by: James P. Lynch, Esq.
Lisa Marie Colone, Esq.
401 Market Street, 4th Floor
P.O. Box 2098
Camden, NJ 08101
for Respondent

IRENAS, Senior District Judge:

This matter having appeared before the Court upon Petitioner Freddy Luis Castaneda-Farfan's Petition to Vacate, Set Aside, or Correct Petitioner's Sentence under 28 U.S.C. § 2255 (Dkt. No. 1), and it appearing that;

(1) On September 28, 2009, the Court converted Castaneda-Farfan's Notice of Appeal to a Petition for relief under 28 U.S.C. § 2255, alleging ineffective assistance of counsel for failure to file a direct appeal. Subsequently, the United States

and Castaneda-Farfan submitted papers in support of Castaneda-Farfan's Petition (Dkt. Nos. 3-4).

(2) This Court previously found that Petitioner's counsel was aware of Petitioner's desire to file a Notice of Appeal prior to the expiration of the 10-day period in which to file notice, but counsel neglected to file the Notice within the appropriate time period. This Court now finds that this failure constituted ineffective assistance of counsel. See *Roe v. Flores-Ortega*, 528 U.S. 470, 477 (2000).

And for good cause shown;

IT IS on this **28th** day of January, 2010,

hereby **ORDERED THAT**

1. Castaneda-Farfan's Petition for relief pursuant to 28 U.S.C. § 2255 is hereby **GRANTED**.

2. The judgment of conviction entered on September 16, 2008 in Crim. No. 08-257 (JEI) shall be **VACATED**, and the judgment of conviction in Crim. No. 08-257 (JEI) shall be **RE-ENTERED** to restart the time by which Petitioner must file a notice of appeal.

4. The Clerk of Court shall **FILE** a notice of appeal from the re-entered judgment of conviction in Crim. No. 08-257 (JEI) on Castaneda-Farfan's behalf.

s/ Joseph E. Irenas
JOSEPH E. IRENAS, S.U.S.D.J.